

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1294 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JAYESH HARINARAYAN DAVE

Versus

BANK OF BARODA

Appearance:

MR Shailesh Brahmhatt for Mr. BP TANNA for Petitioner
MR RM DESAI for Respondent No. 1

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 11/03/99

ORAL JUDGEMENT

This petition has been filed for quashing the dismissal order passed by the disciplinary authority as well as appellate authority. The petitioner had joined the service of the respondent bank on 21st December, 1978 as Parekh clerk (cashier cum clerk) and he was posted at Koyali branch near Baroda. He was issued charge-sheet dated 21st October, 1982. The charge-sheet

was later on amended by a letter dated 8th September, 1982 and it was alleged that the petitioner was one of the partners in the firm M/s. Raj Surgical, Lunawada and the said firm was maintaining and carrying on account with Lunawada branch, dist: Panchmahals. The petitioner was also a partner in the firm M/s. Kens Surgical Corporation, an associate firm of M/s. Shri Sainath Dressing Manufacturing Co.Pvt.Ltd., to which the Bank of Baroda had granted a large advance facility at Lunawada. M/s. Shri Sainath Surgical Dressing Manufacturing Co.Pvt.Ltd. used to draw the bills of M/s. Kens Surgical Corporation which was maintaining account with Syndicate Bank, Maninagar branch, Ahmedabad and the firm Kens Surgical Corporation had two partners, namely Vimlaben Kanchanlal Shah and Jayeshkumar H Dave (petitioner). Subsequently, the firm had sold its assets to one Mr. V.L.Ray. Seven usance bills drawn by M/s. Shri Sainath Surgical Dressing Manufacturing Co.Pvt.Ltd. on M/s. Kens Surgical Corporation which was accepted by the petitioner as partner of M/s. Kens Surgical Corporation were returned unpaid and the details thereof were given. The petitioner, being a partner of M/s. Kens Surgical Corporation, being aware that the said firm was not maintaining sufficient balance in their account, even then the petitioner has accepted usance bills drawn by M/s. Shri Sainath Surgical Dressing Manufacturing Co.Pvt.Ltd. Thereby, the petitioner, put the bank into pecuniary loss of Rs. 48,508.41 ps. plus interest and other expenses and inconvenience. It is further alleged that while joining the bank's service on 21.12.78, the petitioner has deliberately concealed the fact that he was the partner of two firms and that he had not reported to the bank till date and he was engaged in the trade or business outside the scope of his duties. Neither he had obtained permission to continue himself in the business and the bank therefore, charged the petitioner as under:

1. Engaging in any trade or business outside the scope of your duties is a gross misconduct under 19.5(a) of the First Bipartite Settlement.
 2. Doing wilful damage to the property of Bank is a gross misconduct under para 19.5(D) of the First Bi-partite settlement, 1966.
 3. Doing an act prejudicial to the interest of Bank which is a gross misconduct in the para 19.5(J) of the first bipartite settlement, 1966.
2. By the said document, the petitioner was also intimated that Mr. M.O.Shah was appointed as

Inquiry Officer and he will advise the petitioner the date, time and place of inquiry and the petitioner was also required to file a written statement in his defence to the Inquiry Officer within seven days before the date of inquiry. The petitioner was also permitted to defend by a representative of a registered trade union of Bank employees of which the petitioner was a member on the date on which the first notice of commencement of inquiry was given, to produce his evidence, examine witnesses in his defence and also cross-examine witnesses against the petitioner brought by the bank at the time of the inquiry. The petitioner was also informed that in case the petitioner did not remain present, the inquiry proceedings may be proceeded with in his absence.

3. During the course of inquiry, documents were filed by the Presenting Officer and one Mr. Sutaria was also examined in order to prove the charges levelled against the petitioner. At the initial stage, the petitioner requested the Inquiry Officer to grant permission to be defended by his friend B M Shah, advocate and allow him to remain present as his defence representative. He was not able to secure the presence of Mr. B.M.Shah on the date of inquiry i.e. on 20.12.82, hence he requested for adjournment. He also presented the letter dated 20.12.82 alongwith a copy of the written reply given in connection with the letter dated 20.10.82 (charge-sheet) and requested for grant of some time for further submissions. The petitioner also filed written reply to the charge-sheet by a letter dated 27.12.82 and he also filed the reply to the show cause notice against proposed penalty on 6.9.83. The Inquiry Officer after giving reasonable opportunity to the petitioner as well as to the Presenting Officer, gave his findings by an order dated 27.4.83 holding that all the charges levelled against the petitioner stand proved. The petitioner was informed by a letter dated 11.7.83 regarding proposed penalty of dismissal without notice in terms of clause 19(6)(a) of the bipartite settlement and to hear the petitioner on 19th July, 1983. The petitioner submitted his reply dated 6.9.83 to the show cause notice dated 11.7.83. The Disciplinary Authority by an order dated 4.1.1984 passed the punishment order imposing penalty of dismissal in terms of clause 19.6(a) of the bipartite settlement and the order of penalty was directed to be effective after 15 days in terms of the direction given by this Court on 20th September, 1983 in Special Civil Application No.4084 of 1983. The petitioner filed appeal memo on 17.1.84 before the appellate authority. The petitioner also submitted his written arguments dated 24.1.1984 before the appellate

authority. The Appellate Authority by an order dated 25.1.1984 confirmed the punishment awarded by the disciplinary authority. The petitioner has therefore, filed the present petition challenging the said orders of the disciplinary authority as well as appellate authority.

4. I have heard the learned advocate Mr. Shailesh Brahmbhatt for the petitioner and learned advocate Mr. R.M.Desai for the respondent Bank.

5. At the outset, the learned advocate Mr. Brahmbhatt for the petitioner contended that the charges levelled against the petitioner do not make out a case of misconduct. The charge-sheet contains false allegations. It is not accompanied with the list of witnesses and list of documents. It is completely ill-founded, baseless, vague and not sustainable in the eye of law as it does not contain account numbers with dates.

6. I have heard at length Mr. Brahmbhatt, learned advocate for the petitioner. It is true that the charge-sheet is not accompanied with the list of witnesses and list of documents, but it cannot be said that it is a vague one and it is baseless and ill-founded inasmuch as two names of the firm have been given wherein the petitioner was a partner. One is Raj Surgical, Lunawada and the second is M/s. Kens Surgical Corporation. The firm M/s. Kens Surgical Corporation had two partners, namely Vimlaben Kanchanlal Shah and Jayeshkumar M. Dave (i.e. petitioner) and it was sold to one Mr. V.L.Ray. Seven usance bills drawn by M/s. Shri Sainath Dressing Manufacturing Co.Pvt.Ltd. on Kens Surgical Corporation were accepted by the petitioner as the partner of the firm M/s. Kens Surgical Corporation and the complete dates with numbers and amounts are mentioned in the charge-sheet and those bills were returned as unpaid. As the petitioner was the partner of M/s. Kens Surgical Corporation, he was aware that the said firm was not maintaining sufficient balance in the bank account. Even then he had accepted usance bills drawn by M/s. Shri Sainath Dressing Manufacturing Co.Pvt.Ltd. It is also made clear that the petitioner had the service of the respondent bank on 21.12.1978, but the petitioner had deliberately concealed the fact that he was a partner of two firms and he had not disclosed this fact and reported to the bank that he was engaged in the trade or business outside the scope of his duties, nor he obtained permission to continue with his business. Thus, it cannot be said that the charge-sheet is vague and it does not contain complete facts and circumstances

of the allegations.

7. So far as list of witnesses and documents is concerned, during the inquiry proceedings, the petitioner was provided with a list of documents and copies of documents were also supplied to the petitioner. From para-11 of the letter dated 24.1.1984, it appears that the witness of department Shri D.C.Suthar was examined in his presence as it is asserted in para-11 that the inquiry officer has not recorded the answers to the questions asked by the petitioner to the witness of the bank Shri D.C.Suthar. It means that the witness of the department was examined in his presence. If the copy of the deposition of this witness was not supplied, that has not caused any prejudice to the petitioner.

7. The learned counsel for the petitioner next contended that the inquiry has been vitiated due to inordinate delay, after about four years. The inquiry has been initiated inasmuch as cause of action is said to have accrued on 1978-79, but the charge-sheet has been filed on 21.10.82. As such, due to delay, inquiry is vitiated and no punishment can be awarded. He also relied on a decision of the learned Single Judge of this Court in the case of Mohanbhai Dungarbhai vs. Y.B.Zala and others reported in 1979, G.L.R.,497, wherein disciplinary authority took steps after year and a half regarding remaining absent without leave. Such long delay must have been considered as a denial of reasonable opportunity. I have considered the contentions of the learned advocate for the petitioner. But in my opinion, it has no force at all inasmuch as mere delay in proceedings with the inquiry is no ground at all. That depends upon various aspects. As such, sole ground of delay cannot be considered to vitiate the initiation of disciplinary proceedings.

8. The next contention of the learned counsel for the petitioner is that the petitioner has been denied a reasonable opportunity to defend himself in the inquiry proceedings, as rule permits a lawyer's assistance. But the request of the petitioner for lawyer's assistance was indirectly refused. As such, the petitioner was denied the opportunity. In this connection, the learned counsel for the petitioner referred to para 19.12 of the 1st bipartite settlement wherein sub-para (3) provides that the delinquent shall be permitted to be defended with the bank's permission by a lawyer. I have gone through the letter dated 20th December, 1982 of the petitioner in which the petitioner has requested for the assistance of a lawyer. But the

petitioner also requested to adjourn the proceedings as as lawyer's assistance was not available to him at the relevant time. It appears that the case was not adjourned and though there is nothing on record to show that the application of the petitioner for the lawyer's assistance was rejected, the proceedings had continued and indirectly and request of the petitioner for the assistance of the lawyer was not allowed. It is the discretion of the bank whether to allow assistance of the lawyer or not. The petitioner had sought an adjournment on the ground of non-availability of assistance of a lawyer, which was rejected and hence, the proceedings were continued and on the next day, the petitioner never insisted for assistance of a lawyer. As such I do not find any substance in the contention of the learned counsel for the petitioner.

9. In this regard, the learned counsel for the petitioner is that copies of the documents proposed to be relied on by the Presenting Officer have not been supplied and the charge-sheet is silent about documents and list of witnesses to be examined. The Inquiry Officer has made an observation in the inquiry report itself that four documents have been given and fifth document which was a confidential letter of Syndicate Bank which was shown at the relevant time. Thus, the request of the petitioner for supplying documents was granted and on 27.12.82, the papers were furnished to the petitioner. As such, in my opinion, no prejudice has been caused to the petitioner and inquiry does not suffer from any infirmity on this count.

10. The next contention of the learned counsel for the petitioner is that mere partnership in a firm does not amount to misconduct unless it is shown that he was actively participating in the firm. The charge-sheet does not show that the petitioner was actively participating in the business of the firm. As such, no case is made out against the petitioner. I have considered the allegations made against the petitioner in the charge-sheet and the evidence on record which shows that the petitioner was not a sleeping partner at least in the firm M/s. Kens Surgical Corporation as he has signed seven usance bills drawn by Shri Sainath Surgical Dressing Manufacturing Co.Pvt.Ltd. and the petitioner also accepted those bills as one of the partners for and on behalf of the firm M/s. Kens Surgical Corporation. Therefore, it cannot be presumed that the petitioner was not an active partner of the firm at the relevant time. The learned counsel for the petitioner further submitted

that in the letter dated 12.5.82 of Syndicate Bank was not supplied to the petitioner alongwith documents supplied to him on 27.1.83, even then the inquiry officer has relied on the documents in arriving at his findings. It is true that it is mentioned in the inquiry report that beside Mr. Shah showed the confidential report received from the Syndicate Bank, Maninagar branch, Ahmedabad bearing Ref no.537/300/7001/gen dated 12.5.82 to Mr. Dave (delinquent). It is also referred by the inquiry officer in its findings that any other evidence produced by Mr. Shah is confidential report received from the bank i.e. Syndicate bank. This report reveals that the branch has its current account in the name and style of M/s. Kens Surgical Corporation at 24, Rangmani society, Maninagar and Mr. V.C.Ray is the sole proprietor since 9.1.1980. It is further disclosed that they did have an account of M/s. Kens Surgical Corporation which was a partnership firm. The bank further reported that the above partnership firm sold their business to Mr. V.L.Ray in terms of sale deed dated 12.12.1979 exh. M/6. It also reported that the partnership account was closed on 9.1.80 and new partnership firm Mr. V.L.Ray as sole proprietor was opened on the same day. But the inquiry Officer has not recorded the finding only on the basis of these documents. These documents are pieces of evidence which have been relied upon. No doubt, this confidential letter has not been given to the petitioner, but it was shown to him as mentioned in the inquiry report and he could have raised an argument in this report before the inquiry officer. As this is not a sole evidence on which the finding of the inquiry report is based, even if it is excluded, the findings of the inquiry officer are based on other substantial evidence. Hence, the proceedings cannot be said to have been vitiated by non-supply of these documents to the petitioner.

11. The learned counsel for the petitioner also submitted that the signatures purported to have been of the petitioner in seven bills have been compared by the inquiry officer with the admitted signature of the petitioner. On the basis of the bare perusal, no comparison can be made by the inquiry officer. At least for this purpose, the documents on which the petitioner's signatures were found should have been sent to the handwriting expert for his opinion. But in the present case, the signatures of the petitioner alleged to have been made on the bills and other documents have not been sent to any handwriting expert. As such, the opinion of the inquiry officer on the basis of the bare perusal of recording comparison cannot be permitted.

This contention raised on behalf of the petitioner is not sustainable in the eye of law as rule of evidence is not applicable to the departmental proceedings. As such, the findings arrived at by the inquiry officer cannot be said to be vitiated only the basis that the documents containing alleged signatures of the petitioner have not been sent for the opinion of the handwriting expert.

12. He nextly contended that para 19.10 of bipartite settlement requires minutes of books of proceedings (Rojkam) to be maintained in order to show that the proceedings were held. But in the present case, the inquiry officer has not maintained or prepared any Rojkam. It is true that the Rojkam or books of proceedings should be maintained. But in the present case, it does not appear that no rojkam was prepared as this plea has been raised for the first time in this Court and there is nothing on record that no Rojkam was prepared during the inquiry proceedings.

13. I have heard the submissions made on behalf of both the parties and have also gone through the relevant papers. The inquiry officer has recorded his findings. The petitioner has admitted his involvement as partner in the firm of M/s. Kens Surgical Corporation and he stated that before joining the service of the bank, he had already transferred his share by a sale deed dated 12.12.1978. But in this connection, the department has relied on the sale deed dated 12.12.1979 showing that the petitioner remained as partner till 12.12.1979. Though the petitioner was given an opportunity to produce the certified copy of the sale deed or produce the original, he neither filed original nor certified copy thereof and the inquiry officer has come to the conclusion that the petitioner sold the share of his partnership by a sale deed dated 12.12.1979. As such, the fact has been established that the statement of the petitioner is false regarding transfer of partnership by a sale deed dated 12.12.1978 and subsequently, usance bills were accepted and signed by the petitioner as partner of the firm M/s. Kens Surgical Corporation till 9.10.79. That means that the version of the department that he sold the share by a sale deed dated 12.12.1979 appears to be correct one as held by the inquiry officer. If the petitioner remained as partner and acted as a partner of the firm till 9.10.79 and signed seven usance bills drawn by another firm. It will be presumed that the petitioner was actively engaged in the business

outside the scope of his duties and no permission has been obtained by the petitioner from the bank after joining in service in the bank and for engaging himself in any trade or business outside the scope of his duties and non-obtaining a written permission of the bank would amount to gross misconduct and that misconduct is punishable with major penalty. As such, the inquiry officer has not committed any error or irregularity in holding the petitioner guilty of the misconduct.

13. Secondly, during the proceedings he informed the inquiry officer by his letter dated 23.4.83 that he was sending a xerox copy of the sale deed dated 12.12.1978 on which he placed reliance. The original sale deed was in the custody of Mr. Vinodbhai and hence, he was not in a position to submit the same. By another letter dated 9.3.84 the petitioner informed the inquiry officer that he had an apprehension that the inquiry officer was favouring the bank to hold him guilty because of that in consultation with the Presenting Officer Shri R.D.Sheth, the inquiry officer wanted to re-open the inquiry. In para-7 of that letter, he has mentioned that with great regret he was sorry to state that the presenting officer could not discuss the evidence of both the parties and also the conclusion arrived at and it could not be submitted to the inquiry officer. He did not think as an inquiry officer was not aware with the procedure and only to hold him guilty and with a view that his conclusions would not be overruled in appellate authority. He submitted that the inquiry officer must stop the inquiry in the interest of justice and that partial proceedings may be dropped. In the letter dated 22.3.1983, the petitioner also mentioned that the inquiry proceedings was already completed on or before 29.12.1982. Still however, the officer required him to be remained present, meaning thereby that he wanted to re-open the proceedings and it is also mentioned that in his reply of dated 9.3.83, he had stated that he had no faith in the inquiry officer.

14. Thus, from the letters of the petitioner it appears that he was not co-operating with the inquiry proceedings and he was considering himself not to be subordinate to the inquiry officer and hence he gave a warning that his presence was not required in the proceedings. Thus, on the basis of the conduct and attitude also, it appears that the petitioner himself was not co-operating in the proceedings in which the petitioner was given full opportunity to contest the proceedings though he was directed to be present on each date fixed for hearing in the inquiry, but he was

avoiding to attend the proceedings.

15. On the basis of the above discussion, I am of the view that the inquiry officer was justified in holding the petitioner guilty of misconduct on the basis of evidence on record. The disciplinary authority and appellate authority have not committed any mistake or error on the face of the record in holding the petitioner guilty for misconduct. This petition therefore, lacks merits and is accordingly dismissed. Rule is discharged with no order as to costs.

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